

TEACHERS' RETIREMENT BOARD

REGULAR MEETING

OPEN SESSION

SUBJECT: Status of Fiduciary Counsel

ITEM NUMBER: 13

ATTACHMENT(S): No

ACTION:

DATE OF MEETING: April 2, 1998

INFORMATION: X

PRESENTER: Mr. Waddell

The California Supreme Court recently issued a decision concerning the practice of out-of-state attorneys in California that has some impact upon STRS' current arrangement for fiduciary counsel. In Birbrower v. Superior Court (1998)17 Cal. 4th 119, the Court held that a New York law firm that did not employ any California licensed attorneys engaged in the unauthorized practice of law when its attorneys traveled to California and represented a California company in a contractual dispute that was to be resolved according to California law. The case is significant in its application of the general prohibition against practicing law in California absent current State Bar membership even in the current world of interstate law practices and in its finding that the association of California counsel alone does not allow out-of-state attorneys to practice law in California.

STRS currently contracts with the law firm of Groom & Nordberg for fiduciary counsel services that are personally provided by Ian Lanoff. Mr. Lanoff is not a licensed member of the California Bar; however, in the past the STRS Legal Office has received informal, verbal opinions from the Attorney General's office and the State Bar stating that Mr. Lanoff's representation of STRS was permissible.

In light of the recent court decision and concerns that have been expressed by some Board members about whether Mr. Lanoff's work for STRS constituted the unauthorized practice of California law, the Legal Office felt that it was advisable to revisit this issue with the Board.

A significant distinction between the fact pattern before the Court in Birbrower and STRS' existing relationship with Groom & Nordberg is that while Mr. Lanoff is not licensed to practice law in California, another member of his firm is. This, coupled with the fact that Mr. Lanoff's legal advice is based primarily upon the interpretation of federal law (ERISA), the law after which STRS' fiduciary law is Status of Fiduciary Counsel

modeled, leads the Legal Office to conclude that the Board can continue its present working relationship with Mr. Lanoff and his firm if Mr. Lanoff consults with his firm's California-licensed partner on issues prior to bringing them up with the Board during his monthly appearances at Investment Committee meetings. Absent contrary direction from the Board, we plan to implement this change immediately.

The Legal Office also believes that it would be appropriate for the Board to reevaluate the current manner in which it uses fiduciary counsel. Specifically, the Board should consider whether it wishes to end the current practice of having fiduciary counsel in attendance at all Investment Committee meetings. Additionally, we believe that the Board should, consistent with the need identified during the Cortex governance process, review, modify and document the role of fiduciary counsel to ensure that such counsel plays a "distinct, meaningful, and clearly understood" role. Absent contrary direction from the Board, we would propose to submit these matters for the Board's consideration on its May or June agenda.